

103D CONGRESS
1ST SESSION

S. 412

To amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 18 (legislative day, JANUARY 5), 1993

Mr. EXON (for himself, Mr. KERREY, Mr. PRESSLER, Mrs. KASSEBAUM, Mr. DANFORTH, Mr. HATCH, Mr. DORGAN, Mr. BOND, Mr. PRYOR, Mr. BURNS, Mr. GORTON, Mr. LOTT, and Mr. PACKWOOD) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Undercharge Equity
5 Act of 1992”.

1 **SEC. 2. DETERMINATIONS OF REASONABLENESS OF CER-**
2 **TAIN RATES.**

3 (a) IN GENERAL.—Section 10701 of title 49, United
4 States Code, is amended by adding at the end the follow-
5 ing new subsection:

6 “(f)(1) Subject to paragraph (10) of this subsection,
7 when a claim is made by a motor carrier of property (other
8 than a household goods carrier) or by a nonhousehold
9 goods freight forwarder, or by a party representing such
10 carrier or freight forwarder, regarding the collection of
11 rates or charges in addition to the rates or charges origi-
12 nally billed and collected by the carrier or freight for-
13 warder, the person against whom the claim is made may
14 elect to satisfy such claim under paragraph (4) or (5) of
15 this subsection, upon showing that—

16 “(A) such carrier or forwarder is no longer
17 transporting property or is transporting property for
18 the purpose of avoiding the application of this sub-
19 section; and

20 “(B) as to the claim at issue, (i) the person was
21 offered a transportation rate or charge by the car-
22 rier or forwarder other than the rate or charge le-
23 gally on file with the Commission for that shipment,
24 (ii) the person tendered freight to the carrier or for-
25 warder in reasonable reliance upon the offered trans-
26 portation rate or charge, (iii) the carrier or for-

1 warder did not properly or timely file with the Com-
2 mission a tariff providing for such transportation
3 rate or charge or failed to execute a valid contract
4 for transportation services, (iv) such transportation
5 rate or charge was billed and collected by the carrier
6 or forwarder, and (v) the carrier or forwarder de-
7 mands additional payment of a higher rate or charge
8 filed in a tariff.

9 Satisfaction of the claim under paragraph (4) or (5) of
10 this subsection shall be binding on the parties, and the
11 parties shall not be subject to chapter 119 of this title.

12 “(2) If there is a dispute as to paragraph (1)(A) of
13 this subsection, such dispute shall be resolved by the court
14 in which the claim is brought. If there is a dispute as to
15 paragraph (1)(B) (i) through (v) of this subsection, such
16 dispute shall be resolved by the Commission. Pending the
17 resolution of any such dispute, the person shall not have
18 to pay any additional compensation to the carrier or for-
19 warder.

20 “(3) In the event that a dispute arises as to the rate
21 or charge that was legally applicable to the shipment, such
22 dispute shall be resolved by the Commission within 1 year
23 after the dispute arises.

24 “(4) A person from whom the additional legally appli-
25 cable tariff rate or charge is sought may elect to satisfy

1 such claim if the shipment weighed 10,000 pounds or less,
2 by payment of 20 percent of the difference between the
3 carrier's or forwarder's legally applicable tariff rate or
4 charge and the rate or charge originally billed and col-
5 lected.

6 “(5) A person from whom the additional legally appli-
7 cable tariff rate or charge is sought may elect to satisfy
8 such claim if each shipment weighed more than 10,000
9 pounds, by payment of 10 percent of the difference be-
10 tween the carrier's or forwarder's legally applicable tariff
11 rate or charge and the rate or charge originally billed and
12 collected.

13 “(6) Notwithstanding paragraphs (4) and (5) of this
14 subsection, when a claim is made by a carrier or forwarder
15 described in paragraph (1)(A) of this subsection, or by a
16 party representing such carrier or forwarder, regarding
17 the collection of rates or charges in addition to the rate
18 or charge originally billed and collected by the carrier or
19 forwarder, and the person against whom the claim is made
20 is a small-business concern, that person shall not be re-
21 quired to pay the claim and the claim shall be deemed
22 satisfied. Satisfaction of the claim under this paragraph
23 shall be binding on the parties, and the parties shall not
24 be subject to chapter 119 of this title.

1 “(7) When a person from whom the additional legally
2 applicable rate or charge is sought does not elect to use
3 the provisions of paragraph (4), (5), or (6) of this sub-
4 section, the person may pursue all rights and remedies ex-
5 isting under this title.

6 “(8)(A) When a person proceeds under paragraph (7)
7 of this subsection to challenge the reasonableness of the
8 legally applicable rate or charge being claimed by the car-
9 rier or forwarder in addition to the rate or charge origi-
10 nally billed and collected, the person shall not have to pay
11 any additional compensation to the carrier or forwarder
12 until the Commission has made a determination (which
13 shall be made within 1 year after such challenge) as to
14 the reasonableness of the challenged rate or charge as ap-
15 plied to the shipment of the person against whom the
16 claim is made. Subject to subparagraph (B) of this para-
17 graph, the Commission shall require the person to furnish
18 a bond, issued by a surety company found acceptable by
19 the Secretary of the Treasury, or to establish an interest
20 bearing escrow account.

21 “(B) The surety bond or interest bearing escrow ac-
22 count required under subparagraph (A) of this paragraph
23 shall be set or established in an amount equal to—

24 “(i) 20 percent of the amount claimed by the
25 carrier or forwarder for the additional rate or

1 charge, in the case of a shipment weighing 10,000
2 pounds or less; and

3 “(ii) 10 percent of such claimed amount, in the
4 case of a shipment weighing more than 10,000
5 pounds.

6 “(9) Except as authorized in paragraphs (4), (5), and
7 (6) of this subsection, nothing in this subsection shall re-
8 lieve a motor carrier or freight forwarder of the duty to
9 file and adhere to its rates, rules, and classifications as
10 required in sections 10761 and 10762 of this title.

11 “(10) If a carrier or forwarder or party representing
12 such carrier or forwarder makes a claim for additional
13 rates or charges as described in paragraph (1) of this sub-
14 section, the person against whom the claim is made must
15 notify such carrier, forwarder, or party as to the person’s
16 election to proceed under paragraph (2) or (3) of this sub-
17 section. Such notification—

18 “(A) with respect to a claim made before the
19 date of enactment of this subsection, shall be not
20 later than the 30th day after such date of enact-
21 ment; and

22 “(B) with respect to any claim not described in
23 subparagraph (A) of this paragraph, shall be not
24 later than the 60th day after the filing of an answer
25 to a complaint in a civil action for the collection of

1 such rates or charges, or not later than the 90th day
 2 after the date of enactment of this subsection,
 3 whichever is later.

4 “(11) In this subsection, ‘small-business concern’
 5 means a person who would qualify as a small-business con-
 6 cern under the Small Business Act (15 U.S.C. 631 et
 7 seq.).”.

8 **SEC. 3. STATUTE OF LIMITATIONS.**

9 (a) MOTOR CARRIER CHARGES.—Section 11706(a)
 10 of title 49, United States Code, is amended by striking
 11 the period at the end and inserting in lieu thereof the fol-
 12 lowing: “; except that a common carrier providing trans-
 13 portation service subject to the jurisdiction of the Commis-
 14 sion under subchapter II of chapter 105 of this title—

15 “(1) must begin, within 24 months after the
 16 claim accrues, a civil action to recover charges for
 17 such transportation or service if such transportation
 18 or service is provided by the carrier on or after the
 19 date of enactment of this exception and before the
 20 date that is 1 year after such date of enactment;
 21 and

22 “(2) must begin such a civil action within 18
 23 months after the claim accrues if such transpor-
 24 tation or service is provided by the carrier on or

1 after the date that is 1 year after such date of en-
2 actment.”.

3 (b) MOTOR CARRIER OVERCHARGES.—Section
4 11706(b) of title 49, United States Code, is amended by
5 striking the period at the end of the first sentence and
6 inserting in lieu thereof the following: “; except that a per-
7 son must begin within 24 months after the claim accrues
8 a civil action to recover overcharges from a carrier subject
9 to the jurisdiction of the Commission under subchapter
10 II of chapter 105 of this title for transportation or service
11 taking place on or after the date of enactment of this ex-
12 ception and before the date that is 1 years after such date
13 of enactment, and for transportation or service taking
14 place on or after the date that is 1 year following such
15 date of enactment, a person must begin such a civil action
16 within 18 months after the claim accrues.”.

17 (c) CONFORMING AMENDMENT.—Section 11706(d)
18 of title 49, United States Code, is amended by striking
19 “3-year period” each place it appears and inserting in lieu
20 thereof “limitations period”.

21 **SEC. 4. TARIFF RECONCILIATION RULES FOR MOTOR COM-**
22 **MON CARRIERS OF PROPERTY.**

23 (a) IN GENERAL.—Chapter 117 of title 49, United
24 States Code, is amended by adding at the end the follow-
25 ing new section:

1 **“§ 11712. Tariff reconciliation rules for motor com-**
2 **mon carriers of property**

3 “(a) Subject to Interstate Commerce Commission re-
4 view and approval, motor carriers subject to the jurisdic-
5 tion of the Commission under subchapter II of chapter
6 105 of this title and shippers may resolve, by mutual con-
7 sent, overcharge and undercharge claims resulting from
8 billing errors or incorrect tariff provisions arising from the
9 inadvertent failure to properly and timely file and main-
10 tain agreed upon rates, rules, or classifications in compli-
11 ance with sections 10761 and 10762 of this title. Resolu-
12 tion of such claims among the parties shall not subject
13 any party to the penalties of section 11901, 11902, 11903,
14 11904, or 11914 of this title.

15 “(b) Nothing in this section shall relieve the motor
16 carrier of the duty to file and adhere to its rates, rules,
17 and classifications as required in sections 10761 and
18 10762, except as provided in subsection (a) of this section.

19 “(c) The Commission shall, within 90 days after the
20 date of enactment of this section, institute a proceeding
21 to establish rules pursuant to which the tariff require-
22 ments of section 10761 and 10762 of this title shall not
23 apply under circumstances described in subsection (a) of
24 this section.”.

1 (b) CONFORMING AMENDMENT.—The analysis for
2 chapter 117 of title 49, United States Code, is amended
3 by adding at the end the following:

“11712. Tariff reconciliation rules for motor common carriers of property.”.

4 **SEC. 5. EFFECTIVE DATE; APPLICABILITY.**

5 (a) GENERAL RULE.—Except as provided in sub-
6 section (b), the provisions of this Act (including the
7 amendments made by this Act) shall take effect on the
8 date of enactment of this Act.

9 (b) APPLICABILITY OF SECTION 2.—The amend-
10 ments made by section 2 shall apply to any proceeding
11 before the Interstate Commerce Commission, and to any
12 court action, which is pending or commenced on or after
13 the date of enactment of this Act and which pertains to
14 a claim arising from transportation shipments tendered
15 any time prior to the date that is 18 months after such
16 date of enactment. Unless Congress determines a continu-
17 ing need for section 2 and enacts additional legislation,
18 section 2 shall not apply to any such proceeding which
19 pertains to a claim arising from transportation shipments
20 tendered on or after the date that is 18 months following
21 such date of enactment.

22 (c) REPORT.—The Interstate Commerce Commission
23 shall submit a report to Congress, within 1 year after the
24 date of enactment of this Act, regarding whether there ex-

- 1 lists a justification for extending the applicability of section
- 2 2 beyond the limitation period specified in subsection (b).

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